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THE SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS

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January 10, 2000

OFFICE OF
APPELLATE COURTS

JAN 10 2000

FILED

Fred Grittner
Clerk/Supreme Court Administrator
Appellate Court
Minnesota Judicial Center
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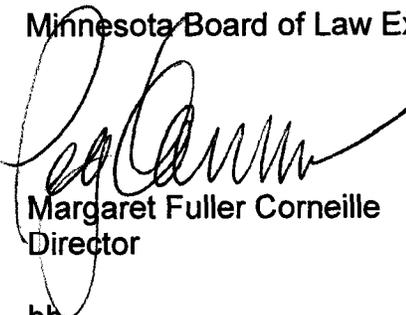
Re: Petition of the Minnesota State Board of Law Examiners for
Amendment of the Minnesota Rules for Admission to the Bar

Dear Mr. Grittner:

Enclosed for filing please find the Petition of the Minnesota State Board of Law Examiners for Amendment of the Minnesota Rules for Admission to the Bar, along with twelve copies.

Very truly yours,

Minnesota Board of Law Examiners


Margaret Fuller Corneille
Director

bb
Enclosure

STATE OF MINNESOTA

IN Supreme Court

FILE NO. C5-84-2139

OFFICE OF
APPELLATE COURTS

JAN 10 2000

FILED

**Petition of the Minnesota State Board of
Law Examiners
For Amendment of the
Minnesota Rules for Admission to the Bar**

PETITION

TO: THE HONORABLE JUSTICES OF THE MINNESOTA SUPREME COURT:

Petitioner, the Minnesota State Board of Law Examiners ("Board"), respectfully petitions the Court to amend the Minnesota Rules for Admission to the Bar (Rules) in order to clarify what the Board requires of attorneys licensed in other states who seek admission to the Bar of Minnesota. In support of this Petition, the Board asserts the following:

1. The Supreme Court has the exclusive and inherent power to regulate the practice of law.
2. Rule 7A of the Minnesota Rules for Admission to the Bar governs the admission of attorneys without examination by permitting practicing attorneys licensed in other states or the District of Columbia to be admitted to the Minnesota Bar without taking and passing the Minnesota State Bar Exam. This Rule rests upon the assumption that an attorney who graduated from an accredited law school and practiced law for more than 5 years without

significant disciplinary or other problems, has made an adequate showing of legal competence and therefore need not take and pass the Minnesota Bar Exam prior to admission to the Minnesota Bar.

3. Twenty-four (24) other states of the United States admit attorneys without examination upon a showing of some form of practice experience. Twenty-six (26) states, including California and Florida, do not admit attorneys unless they sit for and pass the state bar exam.
4. Those states that permit admission on motion do so based upon various definitions of acceptable practice and appropriate legal education. For example, Iowa admits law professors without examination but accepts no other types of legal practice as sufficient for admission without examination. Illinois, on the other hand, like Minnesota, recognizes several different types of practice as qualifying for admission without examination, including practice as a law professor, government attorney, military attorney, in-house counsel, or judicial officer.
5. In the past few years, an increasing number of attorneys have sought admission on motion under Rule 7A claiming to have misunderstood the proper interpretation of the Rule. The following provision, particularly the language in italics, appears to be the source of the problem: "An applicant may be eligible for admission without examination if the applicant ... as principal occupation has been actively and lawfully engaged in the practice of law *in that jurisdiction* or *pursuant to* that license for at least five of the seven years immediately preceding the application."

6. The current Rule states that the qualifying practice of law must have taken place “in that jurisdiction,” meaning in the jurisdiction where the attorney was licensed. The phrase, “or pursuant to that license,” was intended to describe the attorney who has practiced for the federal government or in the JAG Corps and is licensed in one state but, because of the requirements of the federal or military position, practiced elsewhere. Typically, members of the JAG or attorneys with federal agencies need to be licensed in any state in order to practice law for the military or the federal government. It is not uncommon that such attorneys are moved from state to state and practice without being admitted in the state of residence.
7. With greater mobility in the legal profession, attorneys other than those employed by the JAG or federal government are increasingly moving from state to state with corporate transfers or law firm changes. Such attorneys are applying for admission in Minnesota under Rule 7A and expecting that the Board will interpret the “pursuant to” language of Rule 7A to permit them to base their eligibility for admission in Minnesota on practice that occurred in a state where they were not licensed. In some instances, attorneys who have been conducting a practice and residing in the state of Minnesota during part of the 5 year eligibility period have argued that their practice was conducted “pursuant to” another state’s license, and therefore, should qualify them for admission in Minnesota without taking the examination. Such arguments clearly are contrary to the Board’s intention with respect to this Rule.

8. The proposed amendment eliminates the phrase “pursuant to” and states with clarity that the practice of law for the purposes of admission on motion is limited to seven (7) specific types of legal practice: a solo legal practice, practice in a law firm, practice as a judge, practice as an attorney for a state or local governmental entity, in-house counsel for a corporation, attorney for the JAG or federal government, or a professor teaching full time in an approved law school. It also states with clarity that only the last two categories — employment as an attorney with the federal government (including JAG Corps service) or teaching in an approved law school -- may be conducted outside of the state of licensure. The law teaching exception recognizes that law professors have special expertise in their fields and that their membership in the local bar is beneficial to the legal community.
9. In addition to the Rule 7A amendments, the Board recommends an addition to the Rule 2 definition section in order to define the word “jurisdiction”, a term that is used in Rules 4, 5, and 7 to describe other states of the United States or the District of Columbia, as well as territories of the United States. The definition eliminates confusion concerning where an applicant’s practice experience must occur.
10. The last proposed change is a minor amendment to Rule 4 providing that an applicant’s Multistate Professional Responsibility Exam score (the ethics exam administered by the National Conference of Bar Examiners) does not have to be submitted within 12 months of the application but rather, may be submitted any time while the application is pending. The current Rule’s

requirement that the test score be submitted within 12 months of application places hardships on applicants who are occupied in preparation for the Minnesota Bar Exam. This provides applicants with a longer period of time in which to take and pass the Multistate Professional Responsibility exam.

11. The Board's recommendations with respect to Rule 2, Rule 4 and Rule 7A are set forth below:

Rule 2 DEFINITIONS

.....
I. "Jurisdiction" means the District of Columbia or any state or territory of the United States.
.....

Rule 4. General Requirements for Admission

.....
C. Application for Admission
.....

(4) Professional Responsibility Test Scores. An applicant may file an application without having taken the Multistate Professional Responsibility Examination; however, ~~within 12 months after filing the application,~~ the applicant shall submit a score report showing a scaled score of 85 or higher on the Multistate Professional Responsibility Examination prior to being admitted.
.....

Rule 7: Admission without examination

A. Eligibility by Practice. An applicant may be eligible for admission without examination if the applicant otherwise qualifies for admission under Rule 4, ~~has been licensed to practice in the highest court of another jurisdiction and as principal occupation has been actively and~~

~~lawfully engaged in the practice of law in that jurisdiction or pursuant to that license for at least five of the seven years immediately preceding the application. Practice of law may include:~~

- ~~(1) Legal service as a sole practitioner or as a member of a law firm, professional corporation or association;~~
- ~~(2) Judicial service in a court of record or other legal service with any local or state government or with the federal government including services as a member of the Judge Advocate General's Department of one of the military branches of the United States;~~
- ~~(3) Legal service as inside counsel for a corporation, agency, association or trust department;~~
- ~~(4) Teaching full-time in any approved law school.~~

and provides documentary evidence showing that for at least five of the seven years immediately preceding the application, the applicant has been licensed to practice law, has been in good standing in the highest court of another jurisdiction, and as principal occupation, has been actively and lawfully engaged in the practice of law as:

- (1) a sole practitioner;
- (2) a member of a law firm, professional corporation or association;
- (3) a judge in a court of record;
- (4) an attorney for any local or state governmental entity;
- (5) inside counsel for a corporation, agency, association or trust department;
- (6) an attorney with the federal government or a federal governmental agency including service as a member of the Judge Advocate General's Department of one of the military branches of the United States; and/or
- (7) a professor teaching full-time in any approved law school.

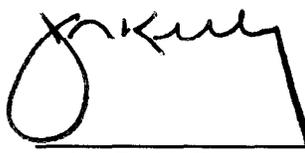
The practice of law must have been in the jurisdiction where the applicant is licensed and during the period of licensure unless the practice falls under (6) or (7) above.

CONCLUSION

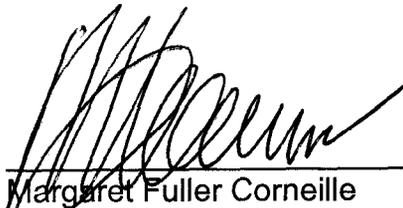
By the proposed amendments, the Board states with specificity that any attorney seeking admission in Minnesota is required to base his or her eligibility upon five (5) years of legal practice in a jurisdiction (other than the state of Minnesota) in which the attorney not only was licensed and in good standing, but a jurisdiction in which the attorney was practicing during the relevant period. Minnesota's Rule 7A provision permitting admission without testing is a liberal provision that is designed to allow a broad spectrum of legal practice to be substituted for taking the Minnesota bar exam. It is not intended to reward attorneys who neglect or avoid becoming licensed in the jurisdiction where they are practicing. Nor is it intended to encourage attorneys to avoid participating in and contributing to any other states' systems of attorney regulation and licensure.

Based upon the foregoing, the Board respectfully requests that the Court adopt the proposed amended Rules.

Dated: *January 10, 2000*



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